



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

WMP
Docket No: 3535-02
10 October 2002



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 October 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 17 August 1987 for four years at age 18. Your record reflects that you served without incident until 12 April 1988, when you received nonjudicial punishment (NJP) for wrongful use of marijuana. The punishment imposed was forfeitures of \$335 per month for two months, reduction to private, and 45 days of restriction. The restriction was suspended for a period of six months. Your record further shows that you completed a drug and alcohol level II treatment program on 6 May 1988.

The record further reflects that you received NJP on 9 August 1988 for an unauthorized absence from 23 July to 8 August 1988, a period of 16 days. The punishment imposed was a forfeiture of \$156 and 14 days of restriction and extra duty. The restriction

and extra duty and \$100 of the forfeitures were suspended for a period of three months.

On 13 December 1989 you received NJP for disrespect to an officer, disobeying a lawful order, and disorderly conduct. The punishment imposed was forfeitures of \$200 per month for two months, reduction to private first class, and 45 days of restriction and extra duty. On 29 January 1990 your appeal of this NJP was denied.

On 6 February 1990 you again received NJP for failure to be at your appointed place of duty. The punishment imposed was forfeitures of \$362 per month for two months and reduction to private.

On 13 July 1990 you submitted a request for separation in lieu of trial by court-martial for two instances of assault and breach of the peace. Prior to submitting this request you conferred with a qualified military lawyer and were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 24 July 1990 your request for separation was approved by the discharge authority. As a result of such action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the other than honorable discharge on 19 October 1990 and assigned an RE-4 reenlistment code.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that you now understand the reality of your behavior and consequences of your actions. However, the Board concluded that the other than honorable discharge was appropriate given your request for discharge in lieu of trial for two instances of assault, breach of the peace, wrongful use of marijuana, 16 days of unauthorized absence. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Additionally, the assignment of an

RE-4 reenlistment code is required when an individual is discharged in lieu of trial by court-martial. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director